88-2130

JUL 28 1989

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

OSCAR O. D'ANGELO,

Petitioner,

vs.

ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION,

Respondent.

MOTION OF AMICUS CURIAE THE JUSTINIAN SOCIETY OF LAWYERS FOR LEAVE TO FILE BRIEF AND BRIEF OF AMICUS CURIAE THE JUSTINIAN SOCIETY OF LAWYERS

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MOTION OF AMICUS CURIAE
THE JUSTINIAN SOCIETY OF LAWYERS
FOR LEAVE TO FILE BRIEF

Now comes amicus curiae, The Justinian Society of Lawyers (the "Society"), and moves this Honorable Court, pursuant to the Court's Rule 36, for leave to file a brief in this cause, and in support thereof states as follows:

1. The Society is a professional organization of lawyers admitted to practice law in the State of Illinois, and has been

organized under the laws of the State of Illinois for over 65 years.

2. Review of the decision of the Illinois Supreme Court in petitioner's case has raised questions in the minds of the members of the Society as to the disbarment imposed upon petitioner through the application of Illinois Disciplinary Rule 7-110(a), when that court itself has stated, in a separate case, that the limits of that rule had, at the time of petitioner's conduct, "not been defined and this lack of definition created an uncertainty among lawyers as to precisely what conduct [the rule] prohibited." In re Jones, 125 Ill.2d 371, 381, 532 N.E.2d 239, 244 (1988).

3. The Society also shares the views of leading and responsible citizens who know and have worked with petitioner, including fellow attorneys, who have come forward to

respectfully raise their bewilderment at the disbarment imposed in this case.

4. The Society recognizes the awesome responsibility imposed upon the courts of every state in these troubled times to maintain the integrity of the legal profession and protect the public from inappropriate conduct of attorneys. It believes, however, that it must add its voice to the number of those who have spoken out since the Illinois Supreme Court's decision in this case, not only because respondent has been a respected member of the legal community for so many years, but because the members perceive a substantial difficulty in understanding the recent decisions of the court below on the subject of Rule 7-110(a).

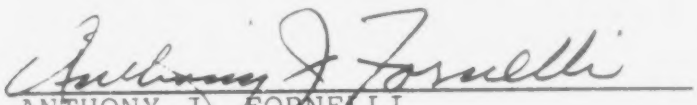
5. Respondent, the Illinois Attorney Registration and Disciplinary Commission,

has not consented to the filing of this brief.

6. The Society believes that the brief it desires to file will be helpful to the Court in its consideration of this matter.

WHEREFORE, the Society prays that this Honorable Court grant it leave to file its brief as amicus curiae, a copy of which brief is submitted herewith.

Respectfully submitted,



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BRIEF OF AMICUS AMICUS CURIAE THE JUSTINIAN SOCIETY OF LAWYERS

Now comes amicus curiae, The Justinian Society of Lawyers (the "Society"), and submits to this Honorable Court, pursuant to the Court's Rule 36, its brief, in this cause.

THE INTEREST OF THE SOCIETY

As set forth in its motion for leave to file this brief, the Society of Lawyers is a professional organization of lawyers

admitted to practice law in the State of Illinois, and has been organized under the laws of the State of Illinois for over 65 years.

The Society urges the Court to grant the petition for leave to appeal. Review of the proceedings in this case and of the decision of the Illinois Supreme Court has raised questions in the minds of the members of the Society as to the disbarment imposed upon petitioner through the application of a disciplinary rule when that court itself has stated, in a separate case, that the limit of that rule had, at the time of petitioner's conduct, "not been defined and this lack of definition created an uncertainty among lawyers as to precisely what conduct [the rule] prohibited." In re Jones, 125 Ill.2d 371, 381, 532 N.E.2d 239, 244 (1988).

The rule which petitioner was held to have violated was Illinois Disciplinary Rule

7-110(a), concerning the giving or lending by an attorney of anything of value to a judge.

The Society also shares the views of leading and responsible citizens who know and have worked with petitioner, including his fellow attorneys, who have come forward to respectfully raise their bewilderment as to the imposition of disbarment in this case.

The Society recognizes the awesome responsibility imposed upon the courts of every state in these troubled times to maintain the integrity of the legal profession and protect the public from inappropriate conduct of attorneys. It believes, however, that it must add its voice to the number of those who have spoken out since the Illinois Supreme Court's decision in this case, not only because

respondent has been a respected member of the legal community for so many years, but because the members perceive a substantial difficulty in understanding the recent decisions of the court below on the subject of Rule 7-110(a).

SUMMARY OF ARGUMENT

The Society argues that petitioner's right to due process was violated when he was disbarred for conduct which occurred before he had been given fair warning that the conduct was prohibited and would subject him to sanction.

ARGUMENT

I.

PETITIONER'S RIGHT TO DUE PROCESS WAS VIOLATED BECAUSE HE WAS NOT GIVEN FAIR WARNING THAT HIS CONDUCT WAS PROHIBITED.

Few cases have raised more questions in the legal community in Illinois than those

consolidated cases styled In re Corboy, 124 Ill.2d 29, 518 N.E.2d 894 (1988). The confusion attendant to the appropriate interpretation of Rule 7-110(a) led to continuous debate within the profession which was addressed by the court below in Corboy and the court's amendment to the rule promulgated in Corboy. In Corboy, six lawyers of local and national prominence engaged in conduct which they believed was perfectly appropriate and even charitable and yet were found to have violated an ethical rule, although the court below discharged the attorneys without discipline because they had varying professional and special relationships with the judge in question and his family, and "acted without the guidance of precedent or settled opinion, and there was, apparently, considerable belief among members of the bar that they had acted properly." In re Corboy, supra, 528 N.E.2d

at 701. Similarly, the attorney in In re Jones, supra, was also not disciplined although there was a loan to a judge of $15,000 during a time when his firm was likely to have a case before the judge.

It is the understanding of the Society that petitioner here was motivated to provide access to rental cars by similar long-term social relationships with judges and non-judicial persons and was under a similar misapprehension of Rule 7-110(a). Indeed, petitioner's reputation for extraordinary acts of charity and benevolence is well known to the Society and the community at large.

The court below has imposed the maximum possible sanction--disbarment--for the violation of a rule which had been enacted but had never been clarified or interpreted by the court below. The rule, though broad in its terms, had been understood to include

exceptions. In Corboy, years after the conduct for which petitioner was disbarred, the court below "rewrote" the rule, and clarified and explained it. However, in petitioner's case, the court ordered a disbarment for conduct found by the court to violate the very rule it had only recently addressed.

Even more perplexing to the Society is the way the court has applied the newly interpreted rule in what appears to the Society to have been an inconsistent manner. For example, in In re Ketchum, 124 Ill.2d 50, 528 N.E.2d 689 (1988), the court below found that an attorney had made several loans over a substantial time period and "intended to and did in fact" receive benefit from the loans to the judge. The lawyer received a suspension of two years. But petitioner, even if we assume the same intent and benefit, was disbarred.

And in In re Karzov, 126 Ill.2d 33, 533 N.E.2d 856, 860 (1988), the attorney made a loan to a judge and the court below found his "motives in making the loan. . . designed to influence (the judge) in judicial decisions," and imposed an 18-month suspension.

The Society submits to this Court that it is not surprising that inconsistent results are reached when a court attempts to impose discipline for violations of a rule which had, even in that court's own view, never been made clear to the members of the bar. In this case, the court first clarified the rule, including within the prohibited conduct actions which had not been clearly prohibited when it occurred, and then disbarred petitioner for the conduct. This was precisely the type of result this Court in Bouie v. City of Columbia, 378 U.S. 347 (1964),

prohibited. In Bouie, this Court confirmed the principle that the deprivation of the right to fair warning is barred by the requirement of due process.

II.

THE COURT BELOW VIOLATED PETITIONER'S RIGHT TO DUE PROCESS WHEN IT IMPOSED DISCIPLINE BECAUSE OF GIFTS OR FAVORS TO PUBLIC EMPLOYEES AND BECAUSE IT FOUND A VIOLATION OF CANON NINE.

The Society finds equally disquieting that portion of the Illinois Court's decision which found petitioner's conduct relating to non-judicial public employees inappropriate because it gives "the impression of one trying to influence decision-makers in all areas of the city and county government." (Opinion, p. 8). The Society agrees that "an attorney's professional conduct must be above reproach. . . " but the Society is not aware of any disciplinary

rule which forbade an Illinois attorney to make a rental car available to a public employee whom the attorney knows or has befriended. If Canon 9 of the Code, that "A lawyer should avoid even the appearance of professional impropriety" (107 Ill.2d Canon 9), means that a lawyer is unehtical if he "gives the impression" by his activity that he is trying to influence decisionmakers, a whole segment of the practicing bar has acted similarly. Lawyer lobbyists, for example, do precisely what appears now to be forbidden, but which has never previously been forbidden.

For the court below to disbar petitioner for (or to take into consideration as a factor in imposing disbarment rather than a lesser sanction) conduct which had absolutely no relationship with Rule 7-110(a) and which is not violative of any express rule of disciplinary conduct, because in the

court's view such conduct falls under the all-encompassing standard of Canon 9, is equally violative of due process, as it imposes penalties without fair warning. This is particularly true when the Illinois court itself has recently stated that Canon 9 "is not a standard of discipline in itself but expresses the policy considerations underlying the disciplinary rules contained within Canon 9." In re Powell, 126 Ill.2d 15, 533 N.E.2d 831, 836 (1988).

CONCLUSION

Amicus curiae, The Justinian Society of Lawyers, respectfully states that this Court should grant the petition for writ of certiorari and clarify the standards to be met by a court in affording due process to an attorney who is charged with violations of disciplinary rules which were not clear and which had neither been understood by the

bar nor stated by the court to include the conduct in question at the time the conduct occurred.

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